

**FEDERAL ELECTION COMMISSION**

Washington, DC 20463

March 15, 2022

**VIA EMAIL ONLY**

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Adam C. Bonin, Esq.  
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121 South Broad Street, Suite 400  
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RE: MUR 7740  
Undivided Purpose and Victoria Perrone in  
her official capacity as treasurer

Dear Mr. Bonin:

On May 29, 2020, the Federal Election Commission notified your client, Undivided Purpose and its treasurer ("Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On March 8, 2022, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe the Committee violated 52 U.S.C. § 30116(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616 or drigsby@fec.gov.

Sincerely,

*Mark Allen*

Mark Allen  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Teresa Tomlinson for Senate and Sheri Labovitz  
in her official capacity as treasurer  
Undivided Purpose and Victoria Perrone in  
her capacity as treasurer

MUR 7740

**I. INTRODUCTION**

The Complaint alleges that Undivided Purpose, an independent expenditure-only political committee (“IEOPC”), may have coordinated an advertisement with the authorized committee of Teresa Tomlinson, a candidate for United States Senate from Georgia in 2020, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Teresa Tomlinson for Senate and Sheri Labovitz in her official capacity as treasurer (“Tomlinson Committee”) and Undivided Purpose deny any coordination and request that the Commission find no reason to believe that they violated the Act. For the reasons set forth below, the Commission finds no reason to believe that Undivided Purpose made, and the Tomlinson Committee accepted, an excessive in-kind contribution in the form of a coordinated communication.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Summary**

Tomlinson was a candidate in the June 9, 2020 Democratic primary election for U.S. Senate in Georgia.<sup>1</sup> Undivided Purpose is an IEOPC that was established in 2020 and made a total of \$106,812.50 in independent expenditures for television advertising in support of Tomlinson.<sup>2</sup>

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<sup>1</sup> Tomlinson lost the primary election to Jon Ossoff, who faced incumbent Senator David Perdue in the November 2020 general election.

<sup>2</sup> See Statement of Organization of Undivided Purpose (Mar. 24, 2020). Undivided Purpose received a total of \$187,704 in contributions consisting of \$187,604 in itemized individual contributions and \$100 in unitemized contributions. See <https://www.fec.gov/data/committee/C00742809/>.

The Complaint states that Undivided Purpose made an independent expenditure of \$10,000 on May 13, 2020 to Mad River Communications (“Mad River”), a digital advertising firm, for an advertisement in support of Tomlinson.<sup>3</sup> The Complaint alleges that Mad River shares an address and a principal with another vendor, Trippi, Norton and Rossmessl Campaigns (“TNR”), a political consulting firm which was hired by the Tomlinson Committee.<sup>4</sup> The Complaint also alleges that Undivided Purpose uses the same fundraising firm, Berger Hirschberg Strategies (“BHS”), that the Tomlinson Committee employs.<sup>5</sup> Because of “the similarities in consulting firms and principals” between the Tomlinson Committee and Undivided Purpose, the Complaint requests that the Commission “conduct an immediate and comprehensive review to ensure no coordination has taken place” between the Tomlinson Committee and Undivided Purpose.<sup>6</sup>

In response, the Tomlinson Committee asserts that the Complaint does not provide any instance or documentation of direct contacts between it and Undivided Purpose or information

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<sup>3</sup> Compl. at 1 (May 26, 2020). *See* Undivided Purpose 2020 Pre-Primary Report at 19 (June 3, 2020) (disclosing the \$10,000 independent expenditure). Undivided Purpose later made independent expenditures to Mad River for television advertisement production for \$10,530 and an ad buy for \$15,000 in support of Tomlinson on May 27, 2020 and June 5, 2020, respectively. Undivided Purpose also paid \$1,700 to Mad River for polling on June 4, 2020. *See* Undivided Purpose 2020 July Quarterly Report at 11 (July 15, 2020). Undivided Purpose paid Mad River a total amount of \$37,230.

<sup>4</sup> Compl. at 1. According to the Office of Secretary of State of Maryland, Joe Trippi of TNR is the registered agent for Mad River, which is located in Wittman, Maryland. Mad River has the same address as Joe Trippi. The Tomlinson Committee did not make any expenditures to Mad River. TNR was formerly known as Joe Trippi & Associates. The Tomlinson Committee paid \$632,541 for media advertising and \$288,413.07 for consulting on digital advertising to Joe Trippi & Associates. *See* [https://www.fec.gov/data/disbursements/?committee\\_id=C0070138&two\\_year\\_transaction\\_period=2020&data\\_type=processed&recipient\\_name=joe+trippi+%26+associates](https://www.fec.gov/data/disbursements/?committee_id=C0070138&two_year_transaction_period=2020&data_type=processed&recipient_name=joe+trippi+%26+associates).

<sup>5</sup> Compl. at 1. Undivided Purpose made expenditures totaling \$15,133.39 to BHS for fundraising consulting, office supplies and telecommunications. *See* Undivided Purpose 2020 Pre-Primary Report at 16 (June 3, 2020); Undivided Purpose 2020 July Quarterly Report at 9 (July 15, 2020). The Tomlinson Committee made expenditures totaling \$175,139.01 to BHS for fundraising consulting. *See* [https://www.fec.gov/data/disbursements/?committee\\_id=C00701383&two\\_year\\_transaction\\_period=2020&data\\_type=processed&recipient\\_name=Berger+Hirschberg](https://www.fec.gov/data/disbursements/?committee_id=C00701383&two_year_transaction_period=2020&data_type=processed&recipient_name=Berger+Hirschberg).

<sup>6</sup> Compl. at 2.

about its plans, projects or activities that were improperly shared by TNR.<sup>7</sup> The Tomlinson Committee acknowledges that TNR and BHS were a political consultant and fundraising vendor, respectively, to the Committee, but it had no arrangement with Mad River.<sup>8</sup> The Tomlinson Committee and Undivided Purpose both assert that their vendors employed firewalls for their staffs working on matters relating to the Tomlinson Committee that separated them from their staff working on projects for independent expenditure committees to make sure that no material information was shared.<sup>9</sup>

Respondents provided copies of the firewall policies established by both TNR and BHS.<sup>10</sup> TNR's firewall policy is dated March 30, 2020, which is more than a month before Undivided Purpose made expenditures to Mad River for digital advertising and television advertising production on behalf of the Tomlinson Committee. TNR's firewall policy also designated specific employees to work on either the independent expenditure team or the candidate team with respect to various campaigns including the U.S. Senate election in Georgia.<sup>11</sup>

Further, the Tomlinson Committee submitted a sworn declaration by Julia Norton, a partner at TNR, stating that she was the lead person at TNR working with the Tomlinson Committee.<sup>12</sup> Additionally, Norton's sworn declaration states that TNR maintained a firewall

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<sup>7</sup> Tomlinson Committee Resp.at 1, 2. (June 26, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2; Undivided Purpose Resp. at 2 (June 12, 2020).

<sup>10</sup> Tomlinson Committee Resp., Exhibit A; Undivided Purpose Resp., Attachments.

<sup>11</sup> *Id.*

<sup>12</sup> Tomlinson Committee Resp., Norton Decl. ¶ 2.

policy and no material information about the Tomlinson Committee was shared with staff working on independent expenditures in this specific election race, and that staff working on independent expenditure activities in this specific election did so out of Mad River.<sup>13</sup> Further, Norton's sworn declaration also states that TNR is "associated with" Mad River, but Mad River is a "distinct" company.<sup>14</sup>

With respect to its commercial relationship with BHS, the Tomlinson Committee states that while BHS is not subject to the Commission's common vendor regulations because it is a fundraising firm and not involved in producing public communications, it still maintained a firewall between BHS staff working on fundraising for the Tomlinson Committee and staff conducting fundraising for Undivided Purpose.<sup>15</sup> The Tomlinson Committee also submitted a sworn declaration by Stephanie Berger of BHS that no material information about the plans and activities of the Tomlinson Committee was shared with BHS staff working on matters for Undivided Purpose.<sup>16</sup>

Finally, the Tomlinson Committee claims that the Complaint cannot presume coordination based solely on the fact that it and Undivided Purpose have common vendors.<sup>17</sup> The Tomlinson Committee and Undivided Purpose assert that the Commission should find no reason to believe that they violated the Act.<sup>18</sup>

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<sup>13</sup> *Id.*, ¶ 3, 6.

<sup>14</sup> *Id.*

<sup>15</sup> Tomlinson Committee Resp. at 2. BHS' firewall policy is dated April 1, 2020 and designates specific employees to work on either the independent expenditure team or the candidate team for the U.S. Senate election in Georgia. *See* Undivided Purpose Resp., Attachments.

<sup>16</sup> Tomlinson Committee Resp., Berger Decl. ¶¶ 7, 8.

<sup>17</sup> Tomlinson Committee Resp. at 3.

<sup>18</sup> *Id.* at 3, 7; Undivided Purpose Resp. at 2.

## B. Legal Analysis

The Act provides that an expenditure made by any person in “cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his or her authorized political committees, or their agents,” constitutes an in-kind contribution.<sup>19</sup> IEOPCs are prohibited from making contributions to candidates and their authorized committees.<sup>20</sup> It is unlawful for candidates, political committees, and their officers and employees to knowingly accept an excessive contribution.<sup>21</sup>

The Commission’s regulations provide a three-part test for determining when a communication is a coordinated expenditure, which is treated as an in-kind contribution.<sup>22</sup> A communication is coordinated if it: (1) is paid for by a third party; (2) satisfies one of five content standards set forth at 11 C.F.R. § 109.21(c),<sup>23</sup> and (3) satisfies one of six conduct standards set forth at 11 C.F.R. § 109.21(d).<sup>24</sup> All three prongs must be satisfied for a communication to be coordinated under the regulations.<sup>25</sup>

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<sup>19</sup> 52 U.S.C. § 30116(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20(a).

<sup>20</sup> *See* 52 U.S.C. § 30116(a) and 52 U.S.C. § 30118(a); Advisory Op. 2010-11 (Common Sense Ten) at 2-3.

<sup>21</sup> 52 U.S.C. § 30116(f).

<sup>22</sup> 11 C.F.R. § 109.21(a)-(b).

<sup>23</sup> The content standards are a communication that is an electioneering communication; a public communication that disseminates, distributes, or republishes, in whole or in part, campaign material prepared by a candidate or the candidate’s authorized committee; a public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office; a public communication referring to various types of federal candidates or to political parties that satisfies the requirements of 11 C.F.R. §§ 109.21(c)(4)(i), (ii), (iii) or (iv); and a public communication that is the functional equivalent of express advocacy. *See* 11 C.F.R. § 109.21(c).

<sup>24</sup> The conduct standards listed in 11 C.F.R. § 109.21(d) are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication.

<sup>25</sup> 11 C.F.R. § 109.21(a); *see also* Explanation and Justification for Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (January 3, 2003).

Applying the coordinated communication test, the payment prong is satisfied because Undivided Purpose, a third party, paid for the communication in support of Teresa Tomlinson cited in the complaint in the amount of \$10,000.<sup>26</sup> Given that it was reported as an independent expenditure, as were other payments by Undivided Purpose for communications, such communications presumably also satisfy the content prong as public communications that expressly advocate the election or defeat of a clearly identified candidate for federal office.<sup>27</sup>

As to the conduct prong of the coordinated communication test, the Complaint did not provide any information that would satisfy any of the conduct standards set forth in 11 C.F.R. § 109.21(d). The Complaint alleges overlap between the Tomlinson Committee and Undivided Purpose vendors, thus raising the “common vendor” conduct standard. The conduct prong may be satisfied if the parties contracted with or employed a common vendor that used or conveyed material information about the campaign’s plans, projects or activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication.<sup>28</sup>

The MUR record contains no evidence indicating that information about Teresa Tomlinson’s plans, projects or activities material to the creation, production, or distribution of the communications was used by or conveyed to the vendors. While it is not clear whether Mad River and TNR, as “associated” entities, are common vendors for purposes of the coordinated communication analysis, the record does not contain any information that the Tomlinson

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<sup>26</sup> 11 C.F.R. § 109.21(a)(1). As discussed above, the total reported amount paid by Undivided Purpose to Mad River was \$37,230.

<sup>27</sup> See 11 C.F.R. § 109.21(c)(3); Factual and Legal Analysis at 13, MUR 6888 (Republican National Committee).

<sup>28</sup> 11 C.F.R. § 109.21(d)(4).

Committee communicated with Mad River. Further, the sworn declaration from Julia Norton of TNR states that no information about the Tomlinson Committee's communications plans were conveyed to anyone working on independent expenditures in connection with this Senate election, and she provided TNR's firewall policy.<sup>29</sup> The other vendor, BHS, is a fundraising firm that is not involved in creating and disseminating public communications for candidates or independent expenditure committees, but it also provided an affidavit explaining its firewall policy and provided the policy itself.<sup>30</sup> The mere fact that the Tomlinson Committee and Undivided Purpose may employ common vendors is insufficient, by itself, to determine coordination.<sup>31</sup> Nor do any of the other conduct standards appear to be met.<sup>32</sup>

In the absence of any available information supporting the coordination allegation, the Commission finds no reason to believe that Undivided Purpose made, and the Tomlinson Committee accepted, an excessive in-kind contribution.

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<sup>29</sup> See Tomlinson Resp., Norton Decl. ¶ 6.

<sup>30</sup> The Commission's regulations at 11 C.F.R. § 109.21(d)(4)(i), (ii) and (iii) all apply to the creation, production, and distribution of communications. Further, Respondents provided documentation of firewall policies by their vendors, which existed at the time of the communication and appear to satisfy safe harbor criteria at 11 C.F.R. § 109.21(h). The firewall policies appear to have been designed and implemented to prohibit the flow of information between the vendors' employees and consultants and those of federal candidates and were distributed to relevant employees and consultants. See 11 C.F.R. § 109.21(h)(1) and (2); Tomlinson Resp., Norton Decl. ¶¶ 3-6.

<sup>31</sup> See Explanation and Justification for Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 435-436 (Jan. 3, 2003). See also Factual and Legal Analysis at 8, MUR 6050 (Boswell for Congress).

<sup>32</sup> See 11 C.F.R. § 109.21(d)(1) request or suggestion; (2) material involvement; (3) substantial discussion; (5) former employee; and (6) republication.